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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SAN JUAN ANA

BY

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7 Attorneys for Plaintiff MOHSEN REIHANIFAM

8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10 (SOUTHERN DIVISION – HONORABLE DAVID O. CARTER)

11 MOHSEN REIHANIFAM, and
 12 individual,

13 Plaintiff,

14 v.

15 FRESenius MEDICAL CARE NORTH
 16 AMERICA, BEN LIPPS, an individual,
 17 R. MAURICE POWELL, an individual

18 Defendants.

CASE NO.: SA12-CV-01580-DDC (JPRx)

**FIRST AMENDED COMPLAINT;
 DEMAND FOR JURY TRIAL**

- BY FAX**
1. RACE/NATIONAL ORIGIN
DISCRIMINATION IN VIOLATION
OF FEHA;
 2. HARASSMENT IN VIOLATION
OF FEHA;
 3. RETALIATION IN VIOLATION OF
FEHA;
 4. FAILURE TO TAKE
PREVENTATIVE STEPS IN
VIOLATION OF FEHA;
 5. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY;
 6. BREACH OF CONTRACT;
 7. BREACH OF THE COVENANT OF
GOOD FAITH AND FAIR
DEALING; AND
 8. INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS

DEMAND FOR JURY TRIAL

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1 Plaintiff MOHSEN REIHANIFAM (hereinafter "Plaintiff"), as an individual, on
2 information and belief, complains and alleges as follows:

3 **A. JURISDICTION AND VENUE**

4 1. The Court has jurisdiction over the lawsuit under 28 U.S.C. § 1332(a)(1)
5 because Plaintiff and Defendant are citizens of different states and the amount in
6 controversy exceeds \$75,000, excluding interest and costs.

7 2. Venue is proper for all claims under 28 U.S.C. § 1391 (b)(2) because the
8 alleged unlawful employment practice was committed in this judicial district.

9 **B. THE PARTIES**

10 3. At all relevant times herein, Plaintiff MOHSEN REIHANIFAM
11 ("Plaintiff") is an individual and at all times mentioned herein a citizen of the State of
12 California.

13 4. Defendant FRESENIUS MEDICAL CARE NORTH AMERICA
14 ("FRESENIUS") is a business entity organized under the laws of the State of
15 Massachusetts.

16 5. Defendant BEN LIPPS ("LIPPS") is a resident of the City of Newport
17 Beach, Orange County. At all times material LIPPS was the chief executive officer of
18 FRESENIUS.

19 6. Defendant MAURICE POWELL ("POWELL") is an individual and a
20 resident of the State of Massachusetts. At all times material POWELL was an
21 employee of FRESENIUS.

22 7. The conduct which the plaintiff complains of in this complaint, and which
23 is alleged below, was carried out by the defendants willfully, intentionally, and with
24 oppression, malice and fraud and was carried out with conscious disregard of
25 plaintiff rights as guaranteed by California law pursuant to which plaintiff is
26 entitled to an award of exemplary damages according to proof.

27 **C. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

28 8. On August 16, 2011, Plaintiff filed a complaint alleging race/national

1 origin/ religion discrimination, failure to prevent discrimination, harassment, and
 2 retaliation with the California Department of Fair Employment and Housing
 3 ("DFEH") against Defendants. Plaintiff received a Right-to-Sue letter from the DFEH
 4 dated August 16, 2011.

5 9. By obtaining his Right-to-Sue letters from the DFEH, Plaintiff exhausted
 6 all available and required administrative remedies. True and correct copies of his
 7 Right-to-Sue letters are attached herewith as Exhibit "A". True and correct copies of
 8 the complaints are attached herewith as Exhibit "B".

9 D. DISCRIMINATION UNDER FEHA

10 1. Plaintiff was an employee within the meaning of California Government
 11 Code § 12926(c) and belongs to a class protected under the statute.

12 2. FRESENIUS is an employer within the meaning of California
 13 Government Code § 12926(d).

14 3. FRESENIUS, LIPPS and POWELL (hereinafter collectively known as
 15 the "Defendants") intentionally discriminated against Plaintiff because of his
 16 race/national origin in violation of FEHA by subjecting him to a continuous pattern of
 17 discriminatory treatment, retaliatory actions, and harassment. Defendants
 18 maintained, and failed to redress, cease or remedy the discriminatory work
 19 environment.

20 F. DAMAGES

21 4. As a direct and proximate result of defendant's conduct, which have
 22 caused and will continue to cause Plaintiff to suffer damages, injuries and losses,
 23 including, but not limited to, loss of earnings, legal costs and attorney's fees,
 24 humiliation, loss of enjoyment of life, and emotional distress associated with the
 25 continued loss of employment.

26 G. FACTS COMMON TO ALL CAUSES OF ACTION

27 10. Plaintiff is a 52 year-old of Iranian descent. He was employed by
 28 Defendant for 24 years, beginning August 18, 1986, until his termination on August

1 20, 2010.

2 11. FRESENIUS holds a monopoly over kidney dialysis services and renal
3 care products. FRESENIUS manufacture and distribute a variety of dialysis products
4 and equipment, including dialysis machines, dialyzers and other dialysis-related
5 supplies. Plaintiff consistently performed at a superior level and was consistently
6 promoted to take on more responsibility. FRESENIUS also serves a large population
7 of federally funded end-stage renal disease ("ESRD") population.

8 12. Plaintiff began his career with FRESENIUS in or about 1986, when it
9 was called Seratronic, Inc. ("Seratronic") in Concord, California as a field service
10 engineer. Plaintiff's job duties included diagnosing technical issues with dialysis
11 machines and related devices. Plaintiff also trained users on the use of dialysis
12 products and supported sales and marketing and nursing teams.

13 13. During Plaintiff's more than 24 years of employment with FRESENIUS,
14 Plaintiff was in charge of almost every department in the FRESENIUS organization.

15 14. In or about 1993 through approximately 1997, Plaintiff held the position
16 of Vice President of Operations for FRESENIUS. In that position he was responsible
17 for all aspects of operation, including, but not limited to being responsible for the
18 production facility and corporate headquarters, reducing production costs on key
19 products, increasing production volume, bringing new products into production,
20 managing purchasing, materials management and planning, production, engineering
21 and development, finance, technical and customer service, site management and
22 human resources. In addition, he worked closely with LIPPS, FRESENIUS' Chief
23 Executive Officer ("CEO"), to provide backup assistant for him during a major
24 acquisition/merger in 1996.

25 15. In or about 1998, Plaintiff was promoted to the position of Vice President,
26 Dialysis Services Technology for FRESENIUS in Lexington, Massachusetts. In this
27 position he oversaw all technical services activities relating to the operation of all
28

1 clinics in the United States, facility management as well as health, environmental
2 safety, and risk management.

3 16. On or about July 26, 1999, after 13 years of stellar performance in a
4 variety of capacities for FRESINIUS in both products and services, Plaintiff was
5 promoted to the position of President of the Dialysis Services West Business Unit
6 supporting LIPPS. In this new position, Plaintiff had "profit and loss" responsibilities
7 in excess of \$600 million dollars with 248 clinics in the Western half of the United
8 States including Hawaii and was responsible for all aspects of the business. Plaintiff's
9 business unit had high growth rate, the best cash collection, the best quality outcomes
10 and the largest numbers of Centers of Excellence within FRESINIUS.

11 17. On or about August 28, 2002, Plaintiff complained in writing to LIPPS,
12 about the treatment on the Executive Board. Plaintiff pointed out that at a recent
13 meeting he raised an issue about employee morale and LIPPS responded in front of
14 the entire Executive Board that Plaintiff "had been in the sun too long" and that
15 Plaintiff was an "arguing Middle Eastern negotiator." Plaintiff further wrote about a
16 former peer, Dwight Morgan, who had recently been appointed as Chief Operation
17 Officer ("COO") and his improper business, ethical and financial practices. Plaintiff
18 expressed concerns to LIPPS that Mr. Morgan was providing inflated numbers to
19 Fresenius AG, FRESINIUS' German parent. Plaintiff expressed to LIPPS that Mr.
20 Morgan's lack of integrity would negatively impact FRESINIUS' growth, employee
21 morale, and quality of care.

22 18. In response to Plaintiff's letter, LIPPS informed Plaintiff that he was
23 being transferred to a newly created position with FRESINIUS as the President of
24 Research and Development. This position was much smaller than his prior position.
25 Plaintiff believes that this demotion was in retaliation for his complaints. Plaintiff
26 complained to FRESINIUS human resources about his demotion.

27 19. In or about 2003 to approximately 2009, Plaintiff held the positions of
28 President, Research and Development - North America and Business Development,

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1 wherein among other duties, he coordinated all product definitions, budget activities,
 2 managed a large group of engineers, scientists and doctors, and managed the product
 3 pipeline in both hemodialysis and peritoneal dialysis. He also was responsible for
 4 business development activities within the products division. Despite his demotion,
 5 Plaintiff continued to perform at a superior level as indicated by his performance
 6 reviews. Plaintiff would now be obligated to report to POWELL as his direct report
 7 supervisor.

8 20. In or about April 2003, FRESenius presented Plaintiff with a written
 9 employment contract, which provided, among other things, that upon termination,
 10 with or without cause, Plaintiff would receive a payment equal to 24 months of base
 11 salary in effect at the time of his termination, bonus and benefits. In addition,
 12 pursuant to FRESenius' policy that was in effect during the entirety of his
 13 employment, upon termination he would have also been entitled to reimbursement of
 14 his business related expenses. This employment contract renewed annually until
 15 FRESenius elected not to renew it in 2009.¹ Attached hereto and incorporated
 16 herein by this reference as Exhibit C is a true and correct copy of the April 2003
 17 Employment Contract.

18 21. Despite being moved to a smaller role, Plaintiff soon learned that he
 19 would continue to be plagued by the same problems that he faced when was the
 20 President of the Business Unit, when he complained to POWELL about things like
 21 "serious health and legal issues with line disconnects and fatal bleeding of patients."
 22 Rather than respond constructively to Plaintiff's concerns, LIPPS and POWELL chose
 23 to isolate Plaintiff and keep him out of the loop. Other safety issues raised by
 24 Plaintiff, included, but were not limited to issues involving patient reaction to EBEAM
 25

26
 27 ¹ In or about December 2008, the employment contract was amended. Attached hereto
 28 and incorporated herein by this reference as Exhibit D is a true and correct copy of the
 December 2008 Employment Contract.

1 as well as quality issues with the Liberty Cyclor, all of which were also raised by other
2 employees. Safety issues were also raised by other employees and customers.

3 22. In or about July 2005, Plaintiff met with POWELL and discussed how he
4 [Plaintiff] believed he had been mistreated, making reference to the fact that during a
5 presentation the prior year that the corporate employment lawyer had referred to
6 FRESENIUS as "not a minority friendly company" and that "Fresenius does not treat
7 minorities correctly." Plaintiff also reminded POWELL that at the National Sales
8 meeting that he [POWELL] pinched Plaintiff's butt numerous times on the dance floor
9 in front of others and later that night in POWELL's private suite he said "I did not
10 know Iranians could even dance."

11 23. POWELL referred to FRESENIUS as a "white male club", Plaintiff
12 believed that POWELL's comment was meant to convey to him that he was no longer
13 welcome because he was not a white male.

14 24. POWELL made additional rude and insensitive comments that
15 referenced Plaintiff's race and/or national origin, including, but not limited to:

16 a. Another member of FRESENIUS' senior management made
17 disparaging comments about African-Americans (Obama in particular) and Muslims
18 and many other racially insensitive remarks about office staff in Plaintiff's presence,
19 which emphasized the point that FRESENIUS was becoming a "white male club."

20 b. POWELL fostered an environment of racial intolerance
21 wherein managers reporting to him felt it acceptable to make a comment during a
22 team meeting on how to deal with the Iraq war by "carpet bombing the hell out of the
23 whole area and start over." Plaintiff was born in the area and still has family
24 members in the area and he found these comments particularly hurtful.

25 c. POWELL created an atmosphere wherein Caucasian team
26 members felt it acceptable to tease Plaintiff for the way he pronounced "three" with
27 his accent it sounded like "tree." Plaintiff believed these comments were made
28 specifically to minimize him because of he was not Caucasian, but Middle Eastern.

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1 d. POWELL excluded Plaintiff from meetings and key activities
2 involving the department Plaintiff was responsible for supervising – R&D – despite
3 the fact that Plaintiff had traditionally been involved in these meetings and activities.
4 Plaintiff believed that this was POWELL's way of proving to him that FRESENIUS
5 was becoming a "white male club."

6 25. Plaintiff sought to break this pattern of harassment by requesting that
7 POWELL consider sensitivity training and awareness for FRESENIUS senior
8 management. POWELL never addressed Plaintiff's requests, and Plaintiff continued
9 to be marginalized and isolated by POWELL and LIPPS and some of those reporting
10 to each of them respectively.

11 26. In or about September 2007, the minimization of Plaintiff by Defendants
12 continued. He was notified that a new Sr. Vice President of Business Development,
13 Renal Therapies Group had been selected and announced – a white male. In addition,
14 Plaintiff learned that an employee who had been reporting to him would now be
15 reporting to the newly announced Sr. Vice President of Business Development, Renal
16 Therapies Group. Plaintiff was dismayed that he learned of these new personnel
17 changes were made via corporate announcement. Plaintiff again complained about
18 this treatment to LIPPS expressing feelings of being humiliated, stressed, losing sleep,
19 even chest pains. Plaintiff also reiterated to LIPPS that this conduct was a consistent
20 pattern with POWELL over the prior three to four years.

21 27. In 2008, Plaintiff contacted the Sr. Vice President, Human Resources,
22 Mr. O'Connell, for Defendant FRESENIUS and informed him about the atmosphere of
23 racial discrimination, harassment and retaliation that existed in FRESENIUS' senior
24 management. Plaintiff provided specific incidents to include, but not limited to those
25 listed above.

26 28. In or about October 2008, Plaintiff believed POWELL was a in
27 agreement with actions that Plaintiff believed would amount to improper accounting
28 practices. Plaintiff vehemently disagreed with POWELL's position and argued that

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1 the integrity and high moral values that FRESENIUS had stood for in the past should
 2 continue in the future. Plaintiff expressed concerns with patient safety and he
 3 voiced these concerns to POWELL.

4 29. In February 2009, in response to Plaintiff's continued complaints about
 5 unlawful employment practices, financial irregularities, concerns for safety and
 6 quality controls in the products and verbal opposition to unlawful, discriminatory
 7 practices and harassment, Plaintiff was removed by LIPPS and POWELL from his
 8 position as head of Research and Development and demoted to the position of a Senior
 9 Advisor on Advanced Renal Products. In addition, Defendants notified Plaintiff that
 10 his employment contract would not be renewed. However, Plaintiff's employment was
 11 not terminated at this time. In Plaintiff's 24 plus years of employment with
 12 FRESENIUS, he was familiar with the practice of moving senior managers to advisor
 13 positions, which signaled that the employee would soon be pushed out of the
 14 organization.

15 30. In or about February 2009, Plaintiff began working for LIPPS in his new
 16 role as senior advisor after being removed from his position as President of R&D.
 17 LIPPS asked Plaintiff to attend to and consider acquisition of a company in Lake
 18 Forest, California by the name of Xcorporeal Alliances, Inc. ("XA") with an initial
 19 meeting attended by LIPPS, Plaintiff and the management of XA in March of 2009.
 20 Plaintiff took on the project and worked full-time taking care of all aspects of the
 21 acquisition. Plaintiff closed the deal in early 2010 and managed all aspects of the
 22 acquisition. One of the components of the contract called for the setup of a joint
 23 venture by FRESENIUS and a contribution of \$1 million into XA to go out and raise
 24 money to develop one of the products – a Wearable Artificial Kidney ("WAK").
 25 Plaintiff was informed that Dr. Victor Gura, an employee of the acquired company,
 26 was going to have a role in the new joint venture as the medical expert.

27 31. Plaintiff is informed and believes that at some point LIPPS decided that
 28 the setting up the joint venture was not a good idea for FRESENIUS because LIPPS

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1 did not want to have to consolidate the joint venture results with FRESNIUS'
 2 finances and therefore LIPPS decided that a standalone company would be better for
 3 FRESNIUS. Eventually the transaction was set up as an off-balance-sheet
 4 transaction to avoid having to consolidate Fresenius' and the joint venture's finances.
 5 Plaintiff believes that setting it up this way was in violation of SEC regulations.

6 32. In or about May 2009, Plaintiff again contacted Mr. O'Connell and
 7 complained that Plaintiff believed that he had been pushed out of his position in
 8 response to his complaints about LIPPS and POWELL's conduct since 2005.

9 33. In or before August 2009, Mr. O'Connell was tasked with the duty of
 10 working out the terms of a new employment contract between Plaintiff and
 11 FRESNIUS. The prior employment agreement commenced in April 2003 and was
 12 amended on December 23, 2008. In regards to that negotiation, Plaintiff
 13 communicated to Mr. O'Connell that he [Plaintiff] wanted to ensure that the provision
 14 in this employment contract would continue to include the guarantee of 24 months of
 15 Plaintiff's annual salary upon termination. Mr. O'Connell responded that the
 16 proposals for a new agreement would include the 24 months of salary if Plaintiff was
 17 terminated.

18 34. Despite Plaintiff's many specific complaints, he is not aware of any
 19 investigation initiated by FRESNIUS. The negotiations for a new employment
 20 contract appeared to be going nowhere and Plaintiff soon realized that he was no
 21 longer wanted as an employee by the defendants.

22 35. Despite the work to finalize a new employment agreement continued, the
 23 isolation, marginalization, and humiliation of Plaintiff continued at the hands of
 24 POWELL. In fact, Plaintiff wrote LIPPS in 2009 and 2010 complaining about
 25 POWELL's continuing efforts to harass, discriminate and retaliate against him.

26 36. LIPPS requested that Plaintiff set up a standalone company. Plaintiff
 27 did so in March 2010. The original name was RenaCor which later was changed to
 28 NephCor because RenaCor was not available. LIPPS also requested that Plaintiff list

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1 his [Plaintiff's] name as the chief executive officer in the articles of incorporation and
2 take ownership of the half of the issued shares in the company. NephCor had 15
3 Million shares with 10 million common and 5 million preferred. Half of the 1 million
4 issued shares (e.g., 500,000) were given to Plaintiff and the other 500,000 shares were
5 given to Dr. Gura. LIPPS later informed Plaintiff that NephCor was going to be his
6 only job option, despite the fact that Plaintiff believed that there were multiple
7 positions available within FRESENIUS that Plaintiff was qualified for including the
8 running of the newly acquired business. Instead the position was given to a friend of
9 LIPPS who happened to be Caucasian.

10 37. In July 2010, FRESENIUS and NephCor entered into a contribution,
11 license and collaboration agreement that involved certain patent and related
12 intellectual property rights owned by FRESENIUS. Under that agreement,
13 FRESENIUS granted NephCor an exclusive license of these patent and related
14 intellectual property rights for the purpose of developing renal products.

15 38. On or about August 20, 2010, after 24 years of dedicated and loyal
16 service, Plaintiff was abruptly terminated from his position at FRESENIUS.
17 Plaintiff's termination was not based on performance. In fact, he had an unblemished
18 record and his performance evaluations were rated as superior.

19 39. Despite the discriminatory treatment from FRESENIUS, Plaintiff
20 continued to work on getting a licensing agreement and contract between
21 FRESENIUS and NephCor, which was finalized and signed in July 2010. Plaintiff's
22 employment with FRESENIUS was terminated shortly after on August 20, 2010
23 without any explanation.

24 40. The discriminatory and harassing treatment against Plaintiff continued,
25 including but not limited to the slandering of Plaintiff by LIPPS to officers at NephCor
26 continued. In September 2010, Plaintiff was improperly removed as chief executive
27 officer, chief financial officer and president of NephCor, without cause and in violation
28 of the applicable bylaws.

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41. Plaintiff believes that he was terminated from FRESENIUS because he opposed unlawful employment practices, spoke out against financial irregularities, stood up for safety and quality in the products and opposed unlawful, discriminatory practices, including, but not limited to harassment towards himself and other minorities.

42. During his employment, Plaintiff also witnessed bias towards other minorities as well as direct comments from the upper management regarding how to deal with regional issues such as dealing with the Middle East by "carpet bombing the whole region." Plaintiff documented and shared his concerns with the Human Resources department and upper management including the Chief Executive Officer of the company as well as The Management Board of the global company (Fresenius AG) in Germany to no avail.

FIRST CAUSE OF ACTION
RACE/NATIONAL ORIGIN DISCRIMINATION
VIOLATION OF FEHA
(AGAINST FRESENIUS)

43. Plaintiff incorporates and realleges by reference all previous paragraphs of this Complaint as if fully set forth herein.

44. At all times mentioned herein, Plaintiff was an employee covered by California Government Code Section 12940(a), which prohibits employers from harassing employees on the basis of race and national origin.

45. At all times relevant during Plaintiff's employment with Defendants, Plaintiff was subjected to illegal discrimination on the basis of his race and national origin, both directly and indirectly, by his supervisors, POWELL and LIPPS.

46. Defendants' discriminatory actions against Plaintiff, as alleged above, constituted unlawful discrimination in employment on the basis of Plaintiff's race and national origin, in violation of Government Code Section 12940(a).

47. As a direct, foreseeable, and proximate result of defendants' wrongful

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1 termination of Plaintiff has suffered and continues to suffer injury to his professional
 2 reputation. Plaintiff has lost and will continue to lose past and future income and
 3 benefits, promotions, stock options, and other benefits of employment, and has
 4 suffered and continues to suffer humiliation, embarrassment, mental and emotional
 5 distress, and discomfort all to Plaintiff's damage in an amount in excess of the
 6 jurisdictional limit, the precise amount of which will be proven at trial. In addition,
 7 Plaintiff's efforts to mitigate his damages have been hindered due to the monopoly
 8 held by FRESNIUS in the renal dialysis market.

9 48. Plaintiff is informed and believes, and thereon alleges, that Defendants,
 10 and their managing agents, committed the acts described herein deliberately,
 11 callously, maliciously, fraudulently and in an oppressive manner intended to injure
 12 Plaintiff and that such improper motives amounted to malice and a conscious
 13 disregard of Plaintiff's rights as set forth above. Therefore, Plaintiff is entitled to an
 14 award of punitive damages from Defendants in an amount according to proof at trial.

15 49. As a result of the discriminatory conduct of Defendants, and each of
 16 them, and their failure to provide a work environment free of discrimination, as
 17 alleged herein, Plaintiff is entitled to costs of suit, including reasonable attorney's fees
 18 pursuant to Government Code Section 12965.

19 **SECOND CAUSE OF ACTION**
 20 **HARASSMENT IN VIOLATION OF FEHA**
 21 **(AGAINST ALL DEFENDANTS)**

22 50. Plaintiff incorporates and realleges by reference all previous paragraphs
 23 of this Complaint as if fully set forth herein.

24 51. As articulated more fully above, Plaintiff was subjected to unwanted
 25 harassing conduct by the Defendants on the basis of race and/or national origin in
 26 violation of Government Code § 12940(j)(1).
 27
 28

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1 52. The harassing conduct of Defendants was severe, widespread, and/or
 2 persistent as to alter the conditions of the employment and to create what Plaintiff
 3 and a reasonable person would consider a hostile or abusive work environment.

4 53. Plaintiff's supervisors LIPPS and POWELL engaged in the harassing
 5 conduct and/or knew or should have known of the harassing conduct and failed to take
 6 immediate and appropriate corrective action.

7 54. Defendants knew or should have known of the harassment, yet failed to
 8 promptly and appropriately investigate the harassment.

9 55. Defendants' harassing conduct was a substantial factor in causing harm
 10 to Plaintiff, including but not limited to: past and future income and benefits,
 11 promotions, stock options, and other benefits of employment, and has suffered and
 12 continues to suffer humiliation, embarrassment, mental and emotional distress, and
 13 discomfort all to Plaintiff's damage in an amount in excess of the jurisdictional limit,
 14 the precise amount of which will be proven at trial. In addition, Plaintiff's efforts to
 15 mitigate his damages have been hindered due to the monopoly held by FRESNIUS in
 16 the renal dialysis market.

17 56. As a direct and proximate cause of the acts alleged above, Plaintiff has
 18 had to hire the services of an attorney. Plaintiff has incurred and continues to incur
 19 legal expenses and attorneys' fees, and is entitled to an award of attorneys' fees and
 20 costs pursuant to Government Code § 12965(b). Plaintiff is presently unaware of the
 21 precise amount of these expenses and fees and prays leave of court to amend this
 22 Complaint when the amounts are more fully known.

23 57. As more fully set forth above, the harassment by Defendants was
 24 committed intentionally, maliciously, wantonly, oppressively, and fraudulently with a
 25 conscious disregard of Plaintiff's rights and with the intent to vex, injure, punish, and
 26 annoy Plaintiff so as to cause the injuries sustained by Plaintiff, which acts amounted
 27 to oppression, fraud, and malice, as described in *California Civil Code* § 3294. Plaintiff
 28 is therefore entitled to punitive or exemplary damages in an amount sufficient to

1 punish and make an example of Defendants. The conduct of Defendants, and each of
2 them, was clearly malicious, oppressive, and despicable.

3 **THIRD CAUSE OF ACTION**
4 **RETALIATION FOR COMPLAINTS OF UNLAWFUL DISCRIMINATION/**
5 **HARASSMENT IN VIOLATION OF FEHA**
6 **(AGAINST FRESENIUS)**

7 58. Plaintiff incorporates the above paragraphs as if they were fully set forth
8 herein.

9 59. At all times herein mentioned, Government Code § 12940 *et seq.* was in
10 full force and effect and was binding on Defendants, as Defendants regularly employed
11 five or more persons. Government Code § 12940(h) makes it unlawful for any person
12 to retaliate against an employee who has opposed a discriminatory practice.

13 60. At all times herein relevant there was an employer/employee relationship
14 between the plaintiff and the defendants.

15 61. Plaintiff complained about the discrimination and harassment to LIPPS,
16 POWELL and FRESENIUS' Human Resources Department, on numerous occasions
17 about the discrimination and harassment.

18 62. Defendants, and each of them, retaliated against Plaintiff for making the
19 aforementioned complaints in the form of further harassment.

20 63. Plaintiff's complaints were a motivating factor in defendants' decision to
21 subject Plaintiff to continued harassment, demotion and termination.

22 64. As a direct, foreseeable, and proximate result of defendants' wrongful
23 termination of Plaintiff has suffered and continues to suffer injury to his professional
24 reputation. Plaintiff has lost and will continue to lose past and future income and
25 benefits, promotions, stock options, and other benefits of employment, and has
26 suffered and continues to suffer humiliation, embarrassment, mental and emotional
27 distress, and discomfort all to Plaintiff's damage in an amount in excess of the
28 jurisdictional limit, the precise amount of which will be proven at trial. In addition,

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1 Plaintiff's efforts to mitigate his damages have been hindered due to the monopoly
 2 held by FRESNIUS in the renal dialysis market.

3 65. As a direct and proximate cause of the acts alleged above, Plaintiff has
 4 had to hire the services of an attorney. Plaintiff has incurred and continues to incur
 5 legal expenses and attorneys' fees, and is entitled to an award of attorneys' fees and
 6 costs pursuant to Government Code § 12965(b). Plaintiff is presently unaware of the
 7 precise amount of these expenses and fees and prays leave of court to amend this
 8 Complaint when the amounts are more fully known.

9 66. The conduct of Defendants and each of them as described above was
 10 malicious, fraudulent, and/or oppressive and done with a willful and conscious
 11 disregard for Plaintiff's rights and for the deleterious consequences of Defendants'
 12 actions. Defendants and each of them, and their agents/employees or supervisors,
 13 authorized, condoned, and ratified the unlawful conduct of each other. Consequently,
 14 Plaintiff is entitled to punitive damages against each of said Defendants.

15 **FOURTH CAUSE OF ACTION**
 16 **FAILURE TO PREVENT HARASSMENT/DISCRIMINATION**
 17 **IN VIOLATION OF FEHA**
 18 **(AGAINST FRESNIUS)**

19 67. Plaintiff incorporates and realleges by reference all previous paragraphs
 20 of this Complaint as if fully set forth herein.

21 68. At all times material hereto, Defendants were employers within the
 22 meaning of California Government Code Section 12926(d), and as such were
 23 prohibited from discriminating and harassing in employment decisions, including
 24 layoffs and terminations, on the basis of an employee's race and/or national origin.

25 69. Defendants failed to prevent discrimination and harassment against
 26 Plaintiff in that Defendants ridiculed Plaintiff on the basis of his race and/or national
 27 origin, and did not take any action to remedy the overt discrimination and harassment
 28 against Plaintiff.

1 70. As a direct, foreseeable, and proximate result of defendants' wrongful
2 termination of Plaintiff has suffered and continues to suffer injury to his business
3 and professional reputation. Plaintiff has lost and will continue to lose past and
4 future income and benefits, promotions, stock options, and other benefits of
5 employment, and has suffered and continues to suffer humiliation, embarrassment,
6 mental and emotional distress, and discomfort all to Plaintiff's damage in an amount
7 in excess of the jurisdictional limit, the precise amount of which will be proven at trial.
8 In addition, Plaintiff's efforts to mitigate his damages have been hindered due to the
9 monopoly held by FRESNIUS in the renal dialysis market.

10 71. As a further proximate result of Defendants' actions, and each of them,
11 Plaintiff has suffered, and continues to suffer, severe and lasting humiliation,
12 embarrassment, and mental anguish, and other incidental and consequential damages
13 and expenses, all to Plaintiff's damage in an amount according to proof at trial.

14 72. Plaintiff is informed and believes, and thereon alleges, that Defendants
15 and their managing agents, committed the acts described herein deliberately,
16 callously, maliciously, fraudulently and in an oppressive manner intended to injure
17 Plaintiff, and that such improper motives amounted to malice and a conscious
18 disregard of Plaintiff's rights as set forth above. Therefore, Plaintiff is entitled to an
19 award of punitive damages from Defendants in an amount according to proof at trial.

20 73. As a result of the discriminatory conduct of Defendants, and each of
21 them, in their failure to provide a workplace free of discrimination, as alleged herein,
22 Plaintiff is entitled to costs of suit, including reasonable attorneys' fees pursuant to
23 Government Code Section 12965.

FIFTH CAUSE OF ACTION
WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY
(AGAINST FRESNIUS)

74. Plaintiff incorporates the above paragraphs as if they were fully set forth herein.

75. Plaintiff alleges that Defendants termination of Plaintiff was in violation of the public policy as expressed both in California Constitution Article I, section 8 which prohibits discrimination against employees and Section 12940 *et seq.* of the Government Code. The above described conduct of Defendants also constitutes race/National Origin, harassment and retaliation, and wrongful termination of Plaintiff in violation of public policy embodied in the FEHA.

76. As a direct, foreseeable, and proximate result of defendants' wrongful termination of Plaintiff has suffered and continues to suffer injury to his professional reputation. Plaintiff has lost and will continue to lose past and future income and benefits, promotions, stock options, and other benefits of employment, and has suffered and continues to suffer humiliation, embarrassment, mental and emotional distress, and discomfort all to Plaintiff's damage in an amount in excess of the jurisdictional limit, the precise amount of which will be proven at trial. In addition, Plaintiff's efforts to mitigate his damages has been hindered due to the monopoly held by FRESNIUS in the renal dialysis market

77. Because the acts taken toward Plaintiff were carried out by managerial employees acting in a deliberate, cold, callous, malicious, oppressive, and intentional manner in order to injure and damage Plaintiff, Plaintiff requests the assessment of punitive damages against defendant employers in an amount appropriate to punish and make an example of defendants.

78. The acts, conduct and negligence of defendants caused Plaintiff to suffer emotional distress and, as a result thereof, Plaintiff has suffered damages as set out in this complaint in amounts to be proven at the time of trial.

**SIXTH CAUSE OF ACTION
FOR BREACH OF CONTRACT
(AGAINST FRESENIUS)**

85. As a result of Defendant breach of the contract, Plaintiffs have been damaged in a sum not yet ascertained. When such damages are ascertained, Plaintiffs

1 shall seek leave of Court to amend this Complaint to reflect said sum when it has been
2 ascertained.

3 86. Defendants, and each of them, committed the acts alleged herein
4 maliciously, fraudulently, and oppressively, with the conscious disregard of Plaintiff's
5 rights. Plaintiff is thus entitled to recover punitive damages from Defendants, and
6 each of them, in an amount according to proof.

7 87. Plaintiff has incurred and continues to incur legal expenses and attorney
8 fees. Plaintiff is presently unaware of the precise amount of said expenses and fees,
9 and prays leave of Court to amend this complaint when said amounts are more fully
10 known.

11 **SEVENTH CAUSE OF ACTION**
12 **FOR BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**
13 **(AGAINST FRESENIUS)**

14 88. Plaintiff incorporates and realleges by reference all previous paragraphs
15 of this Complaint as if fully set forth herein.

16 89. Plaintiff employment agreement with FRESENIUS contained an implied
17 covenant of good faith and fair dealing by which FRESENIUS promised to give
18 Plaintiff full cooperation in his employment performance, and to refrain from doing
19 any act that would prevent or impede Plaintiff from performing all conditions of his
20 employment, or any act that would prevent or impede Plaintiff's enjoyment of the fruits
21 of his employment. Specifically, the covenant of good faith and fair dealing required
22 FRESENIUS to perform the terms and conditions of the employment agreement
23 fairly, honestly, and reasonably. California law implies a covenant of good faith and
24 fair dealing in all contracts between parties entered into in the State of California.

25 90. FRESENIUS' termination of Plaintiff's employment was wrongful, in bad
26 faith, arbitrary, and unfair, and was done to frustrate his enjoyment of the contract's
27 actual benefits, in breach of said covenant. Plaintiff was terminated on the pretext
28 that just cause existed to discharge him when FRESENIUS knew there was no just

LAW OFFICE OF H. LARRY ELAM III

2977 Ygnacio Valley Road, #267

Walnut Creek, CA 94598

Tel: (925) 465-5151

Fax: (925) 465-5152

1 cause. Plaintiff was discharged for reasons extraneous to the employment agreement,
2 without good or sufficient cause.

3 91. As a result of the actions of the Defendants set forth hereinabove, said
4 Defendants, and each of them, have violated the implied covenant of good faith and fair
5 dealing contained in Defendants policy to deal consistently and fairly with its
6 employees, and for the purpose of frustrating Plaintiff's enjoyment of the benefits of
7 his employment with Defendants. Further, Defendants breached the covenant by:

8 a. Subjecting Plaintiff to different standards from those expected of
9 other employees;

10 b. Treating Plaintiff differently because of his race and/or national
11 origin;

12 c. Terminating Plaintiff's employment without cause, and for
13 reasons that have nothing to do with legitimate business justification, despite
14 excellent job performance; and

15 d. Failing to follow their written personnel policies, or to apply the
16 same personnel policies to Plaintiff that apply to other employees

17 92. As a direct, foreseeable, and proximate result of defendants' wrongful
18 termination of Plaintiff has suffered and continues to suffer injury to his professional
19 reputation. Plaintiff has lost and will continue to lose past and future income and
20 benefits, promotions, stock options, and other benefits of employment, and has
21 suffered and continues to suffer humiliation, embarrassment, mental and emotional
22 distress, and discomfort all to Plaintiff's damage in an amount in excess of the
23 jurisdictional limit, the precise amount of which will be proven at trial. In addition,
24 Plaintiff's efforts to mitigate his damages have been hindered due to the monopoly
25 held by FRESNIUS in the renal dialysis market.

26 93. Plaintiff has incurred and continues to incur legal expenses and attorney
27 fees. Plaintiff is presently unaware of the precise amount of said expenses and fees,
28

LAW OFFICE OF H. LARRY ELAM III
 2977 Ygnacio Valley Road, #267
 Walnut Creek, CA 94598
 Tel: (925) 465-5151
 Fax: (925) 465-5152

1 and prays leave of Court to amend this complaint when said amounts are more fully
 2 known.

3 **EIGHTH CAUSE OF ACTION**
 4 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
 5 **(AGAINST ALL DEFENDANTS)**

6 94. Plaintiff incorporates and realleges by reference all previous paragraphs
 7 of this Complaint as if fully set forth herein.

8 95. Defendants and each of them knew or should have known that failure to
 9 exercise due care in the performance of Defendants' acts as to Plaintiff's rights would
 10 cause Plaintiff severe emotional distress.

11 96. As a direct, foreseeable, and proximate result of defendants' wrongful
 12 termination of Plaintiff has suffered and continues to suffer injury to his professional
 13 reputation. Plaintiff has lost and will continue to lose past and future income and
 14 benefits, promotions, stock options, and other benefits of employment, and has
 15 suffered and continues to suffer humiliation, embarrassment, mental and emotional
 16 distress, and discomfort all to Plaintiff's damage in an amount in excess of the
 17 jurisdictional limit, the precise amount of which will be proven at trial. In addition,
 18 Plaintiff's efforts to mitigate his damages have been hindered due to the monopoly
 19 held by FRESNIUS in the renal dialysis market.

20 97. Plaintiff has incurred and continues to incur legal expenses and attorney
 21 fees. Plaintiff is presently unaware of the precise amount of said expenses and fees,
 22 and prays leave of Court to amend this complaint when said amounts are more fully
 23 known.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff MOHSEN REIHANIFAM prays judgment to be
 26 entered against Defendants, and each of them, and in her favor, as follows:

27 1. For compensatory damages including lost wages, lost employee benefits,
 28 bonuses, vacation benefits, sick pay, unreimbursed work related expenses, mental and

1 emotional distress, and other special and general damages on all causes of action;

2 2. For an award of interest, including prejudgment interest, at the legal
3 rate;

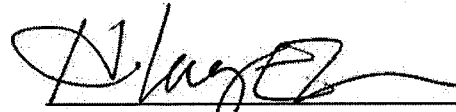
4 3. For an award of punitive and exemplary damages in an amount
5 appropriate to punish Defendants and to make an example of them to the community;

6 5. For cost of suit, including reasonable attorneys' fees; and

7 6. For such other and further relief as the Court may deem just and proper.

8 Dated: February 7, 2013

LAW OFFICE OF H. LARRY ELAM III

9
10 

11 H. Larry Elam III

12 Attorneys for Plaintiff MOHSEN
13 REIHANIFAM
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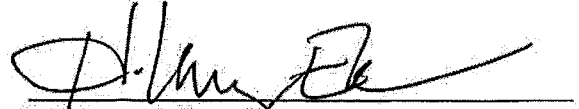
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2977 Ygnacio Valley Road, #267
Walnut Creek, CA 94598
Tel: (925) 465-5151
Fax: (925) 465-5152

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and Local Rule 38-1, Plaintiff hereby demands a jury trial in this action.

Dated: February 7, 2013

LAW OFFICE OF H. LARRY ELAM III


H. Larry Elam III

Attorneys for Plaintiff MOHSEN
REIHANIFAM

LAW OFFICE OF H. LARRY ELAM III
2977 Ygnacio Valley Road, #267
Walnut Creek, CA 94598
Tel: (925) 465-5151
Fax: (925) 465-5152

EXHIBIT A



STATE OF CALIFORNIA - STATE AND CONSUMER SERVICES AGENCY

EDMUND G. BROWN, JR., Governor

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

1055 WEST 7TH STREET, SUITE 1400, LOS ANGELES, CA 90017
(213) 439-6770
www.dfeh.ca.gov

Phyllis W. Chong, Director

August 16, 2011

REIHANIFAM, MOHSEN
P.O. BOX 7183
RANCHO SANTA FE, CA 92067

RE: E201112R5594-00
REIHANIFAM/FRESENIUS MEDICAL CARE NORTH AMERICA

Dear REIHANIFAM, MOHSEN:

NOTICE OF CASE CLOSURE

This letter informs that the above-referenced complaint that was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective August 16, 2011 because an immediate right-to-sue notice was requested. DFEH will take no further action on the complaint.

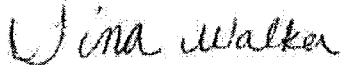
This letter is also the Right-To-Sue Notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

If a federal notice of Right-To-Sue is wanted, the U.S. Equal Employment Opportunity Commission (EEOC) must be visited to file a complaint within 30 days of receipt of this DFEH *Notice of Case Closure* or within 300 days of the alleged discriminatory act, whichever is earlier.

Notice of Case Closure
Page Two

DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,



Tina Walker
District Administrator

cc: Case File

BRIAN O'CONNELL
VP OF HUMAN RESOURCES
FRESENIUS MEDICAL CARE NA
920 WINTER STREET
WALTHAM, MA 02451



STATE OF CALIFORNIA - STATE AND CONSUMER SERVICES AGENCY

EDMUND G. BROWN, JR., Governor

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

1055 WEST 7TH STREET, SUITE 1400, LOS ANGELES, CA 90017
(213) 439-6770
www.dfeh.ca.gov

Phyllis W. Cheng, Director

August 16, 2011

REIHANIFAM, MOHSEN
P.O. BOX 7183
RANCHO SANTA FE, CA, 92067

RE: E201112R5594-01
REIHANIFAM/LIPPS, BEN. AS AN INDIVIDUAL

Dear REIHANIFAM, MOHSEN:

NOTICE OF CASE CLOSURE

This letter informs that the above-referenced complaint that was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective August 16, 2011 because an immediate right-to-sue notice was requested. DFEH will take no further action on the complaint.

This letter is also the Right-To-Sue Notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

If a federal notice of Right-To-Sue is wanted, the U.S. Equal Employment Opportunity Commission (EEOC) must be visited to file a complaint within 30 days of receipt of this DFEH *Notice of Case Closure* or within 300 days of the alleged discriminatory act, whichever is earlier.

Notice of Case Closure
Page Two

DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,

A handwritten signature in cursive script that reads "Tina Walker".

Tina Walker
District Administrator

cc: Case File

BRIAN O'CONNELL
VP OF HUMAN RESOURCES
FRESENIUS MEDICAL CARE NA
920 WINTER STREET
WALTHAM, MA 02451



STATE OF CALIFORNIA - STATE AND CONSUMER SERVICES AGENCY

EDMUND G. BROWN, JR., Governor

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

Phyllis W. Cheng, Director

1055 WEST 7TH STREET, SUITE 1400, LOS ANGELES, CA 90017
(213) 439-6770
www.dfeh.ca.gov

August 16, 2011

REIHANIFAM, MOHSEN
P.O. BOX 7183
RANCHO SANTA FE, CA, 92067

RE: E201112R5594-02
REIHANIFAM/POWELL, MAURICE, AS AN INDIVIDUAL

Dear REIHANIFAM, MOHSEN:

NOTICE OF CASE CLOSURE

This letter informs that the above-referenced complaint that was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective August 16, 2011 because an immediate right-to-sue notice was requested. DFEH will take no further action on the complaint.

This letter is also the Right-To-Sue Notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

If a federal notice of Right-To-Sue is wanted, the U.S. Equal Employment Opportunity Commission (EEOC) must be visited to file a complaint within 30 days of receipt of this DFEH *Notice of Case Closure* or within 300 days of the alleged discriminatory act, whichever is earlier.

Notice of Case Closure
Page Two

DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,



Tina Walker
District Administrator

cc: Case File

BRIAN O'CONNELL
VP HUMAN RESOURCES
FRESENIUS MEDICAL CARE NA
920 WINTER STREET
WALTHAM, MA 02451

EXHIBIT B

*** EMPLOYMENT ***

COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACT

DFEH # E201112R5594-00

DFEH USE ONLY

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

YOUR NAME (Indicate Mr. or Ms.)

REIHANIFAM, MOHSEN

TELEPHONE NUMBER (INCLUDE AREA CODE)

(858)756-7174

ADDRESS

P.O. BOX 7183

CITY/STATE/ZIP

RANCHO SANTA FE, CA 92067

COUNTY

SAN DIEGO

COUNTY CODE

073

NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, OR STATE OR LOCAL GOVERNMENT AGENCY WHO
DISCRIMINATED AGAINST ME:

NAME

FRESENIUS MEDICAL CARE NORTH AMERICA

TELEPHONE NUMBER (Include Area Code)

(781)699-9000

ADDRESS

P.O. BOX 7183

DFEH USE ONLY

CITY/STATE/ZIP

RANCHO SANTA FE, CA 92067

COUNTY

SAN DIEGO

COUNTY CODE

073

NO. OF EMPLOYEES/MEMBERS (# known)

500+

DATE MOST RECENT OR CONTINUING DISCRIMINATION
TOOK PLACE (month, day, and year)

08/21/2010

RESPONDENT CODE

00

THE PARTICULARS ARE:

I allege that on about or before
08/21/2010, the following
conduct occurred:

<input checked="" type="checkbox"/> termination	<input type="checkbox"/> denial of employment	<input type="checkbox"/> denial of family or medical leave
<input type="checkbox"/> laid off	<input type="checkbox"/> denial of promotion	<input type="checkbox"/> denial of pregnancy leave
<input checked="" type="checkbox"/> demotion	<input type="checkbox"/> denial of transfer	<input type="checkbox"/> denial of equal pay
<input type="checkbox"/> harassment	<input type="checkbox"/> denial of accommodation	<input type="checkbox"/> denial of right to wear pants
<input type="checkbox"/> genetic characteristics testing	<input checked="" type="checkbox"/> failure to prevent discrimination or retaliation	<input type="checkbox"/> denial of pregnancy accommodation
<input type="checkbox"/> constructive discharge (forced to quit)	<input checked="" type="checkbox"/> retaliation	
<input type="checkbox"/> impermissible non-job-related inquiry	<input checked="" type="checkbox"/> other (specify) Harassment	

by FRESENIUS MEDICAL CARE NORTH AMERICA

because of:

Name of Person

Job Title (supervisor/manager/personnel director/etc.)

<input type="checkbox"/> sex	<input checked="" type="checkbox"/> national origin/ancestry	<input type="checkbox"/> disability (physical or mental)	<input checked="" type="checkbox"/> retaliation for engaging in protected
<input type="checkbox"/> age	<input type="checkbox"/> marital status	<input type="checkbox"/> medical condition (cancer or	activity or requesting a protected
<input checked="" type="checkbox"/> religion	<input type="checkbox"/> sexual orientation	<input type="checkbox"/> genetic characteristic	leave or accommodation
<input checked="" type="checkbox"/> race/color	<input type="checkbox"/> association	<input type="checkbox"/> other (specify)	

State of what you
believe to be the
reason(s) for
discrimination

I WAS TERMINATED FROM MY POSITION AT FRESENIUS (THE "COMPANY") IN RETALIATION FOR OPPOSING UNLAWFUL EMPLOYMENT PRACTICES, SPEAKING OUT AGAINST FINANCIAL IRREGULARITIES, STANDING UP FOR SAFETY AND QUALITY IN THE PRODUCTS AND OPPOSING UNLAWFUL, DISCRIMINATORY PRACTICES, INCLUDING, BUT NOT LIMITED TO SEXUAL HARASSMENT TOWARDS MYSELF AND OTHER MINORITIES, INCLUDING WOMEN. PRIOR TO THE RETALIATION, I WAS THE SUBJECT OF HARASSMENT AND DISCRIMINATION BASED ON MY RACE, NATIONAL ORIGIN, RELIGION AND/OR COLOR BEGINNING IN 1999 AND CONTINUING UP UNTIL I WAS TERMINATED IN AUGUST 2010.

I wish to pursue this matter in court. I hereby request that the Department of Fair Employment and Housing provide a right-to-sue. I understand that if I want a federal notice of right-to-sue, I must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of the DFEH "Notice of Case Closure," or within 300 days of the alleged discriminatory act, whichever is earlier.

I have not been coerced into making this request, nor do I make it based on fear of retaliation if I do not do so. I understand it is the Department of Fair Employment and Housing's policy to not process or reopen a complaint once the complaint has been closed on the basis of "Complainant Elected Court Action."

By submitting this complaint I am declaring under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge except as to matters stated on my information and belief, and as to those matters I believe it to be true.

Dated 08/16/2011

At Walnut Creek

DATE FILED: 08/16/2011

DFEH-300-03a (02/08)

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

STATE OF CALIFORNIA

I WAS TERMINATED FROM MY POSITION AT FRESENIUS (THE "COMPANY") IN RETALIATION FOR OPPOSING UNLAWFUL EMPLOYMENT PRACTICES, SPEAKING OUT AGAINST FINANCIAL IRREGULARITIES, STANDING UP FOR SAFETY AND QUALITY IN THE PRODUCTS AND OPPOSING UNLAWFUL, DISCRIMINATORY PRACTICES, INCLUDING, BUT NOT LIMITED TO SEXUAL HARASSMENT TOWARDS MYSELF AND OTHER MINORITIES, INCLUDING WOMEN. PRIOR TO THE RETALIATION, I WAS THE SUBJECT OF HARASSMENT AND DISCRIMINATION BASED ON MY RACE, NATIONAL ORIGIN, RELIGION AND/OR COLOR BEGINNING IN 1999 AND CONTINUING UP UNTIL I WAS TERMINATED IN AUGUST 2010.

AFTER I BECAME PRESIDENT OF THE DIALYSIS WEST BUSINESS UNIT I SAW A DISTINCT RELAXATION OF MORAL STANDARDS. CORNERS BEGAN TO BE CUT, QUALITY OF PRODUCT WAS SACRIFICED, FINANCIAL IRREGULARITIES BEGAN TO SURFACE AND ABUSIVE BEHAVIOR TOWARDS MINORITIES WAS TOLERATED. WHEN I REFUSED TO LOOK THE OTHER WAY AND REPORTED THESE THINGS TO BOTH HUMAN RESOURCES (BRIAN O'CONNELL) AND THE CHIEF EXECUTIVE OFFICER OF THE COMPANY (BEN LIPPS), I BEGAN TO BE SUBJECTED TO UNFAIR SCRUTINY, DEMOTIONS, RETALIATION, HARASSMENT AND DISCRIMINATION. WHEN DISCUSSING ISSUES OF EMPLOYEE MORALE, MR. LIPPS COMMENTED THAT I HAD BEEN "IN THE SUN TOO LONG" REFERRING TO MY DARK SKIN COLOR AND THAT I WAS "AN ARGUING MIDDLE EASTERN NEGOTIATOR." WHEN I RAISED CONCERNS ABOUT IMPROPER BUSINESS, ETHICAL, FINANCIAL PRACTICES AND UNFAIR TREATMENT OF MINORITY EMPLOYEES, I WAS TRANSFERRED TO A MUCH SMALLER, NEWLY CREATED, POSITION (PRESIDENT OF DIALYSIS PRODUCTS RESEARCH AND DEVELOPMENT AND NEW BUSINESS DEVELOPMENT IN THE DIALYSIS PRODUCTS DIVISION) DESPITE THE FACT THAT THE DEPARTMENT I WAS IN CHARGE OF WAS CONSIDERED THE BEST WITHIN THE COMPANY AND HAD THE HIGHEST GROWTH RATE IN THE U.S., THE BEST CASH COLLECTION, THE BEST QUALITY AND THE LARGEST NUMBER OF CENTERS OF EXCELLENCE WITHIN THE COMPANY.

DESPITE SUFFERING WHAT I INTERPRETED AS A DEMOTION, I CONTINUED TO PERFORM AT A SUPERIOR LEVEL. DESPITE MY CHANGE IN POSITION I CONTINUED TO SEE THE SAME PROBLEMS AND I CONTINUED TO RAISE THE SAME CONCERNS TO COMPANY MANAGEMENT. WHEN I COMPLAINED TO MY DIRECT REPORT (MAURICE POWELL), THE RESULTS OF MY CONTINUED COMPLAINTS WAS THAT MESSRS. POWELL AND LIPPS BEGAN TO ISOLATE ME AND KEEP ME OUT OF THE LOOP BY EXCLUDING ME FROM MEETINGS AND OTHER KEY ACTIVITIES THAT I HAD PREVIOUSLY BEEN A ROUTINE PARTICIPANT AND DROPPING ME ALTOGETHER FROM RELEVANT DISTRIBUTION LISTS. I CONTINUED TO COMPLAINT TO MR. POWELL BOTH IN WRITING AND ORALLY ABOUT THE HARASSMENT, RETALIATION AND DISCRIMINATION I CONTINUED TO EXPERIENCE.

I REALIZED THAT THE COMPANY WAS NO LONGER A MINORITY FRIENDLY COMPANY AND WOULD NOT TREAT MINORITIES CORRECTLY, INCLUDING, BUT NOT LIMITED TO MYSELF. IN FACT, I HEARD THE COMPANY'S EMPLOYMENT LAWYER REFER TO THE COMPANY AS NOT BEING "A MINORITY FRIENDLY COMPANY" AND THAT THE COMPANY "DOES NOT TREAT MINORITIES CORRECTLY." PERSONALLY OFFENSIVE CONDUCT CONTINUED. ON ONE OCCASION DURING A CORPORATE EVENT WHERE DANCING WAS TAKING PLACE, BEING OF IRANIAN DESCENT, I FOUND IT OFFENSIVE FOR MR. POWELL TO COMMENT THAT HE DID NOT KNOW THAT "IRANIANS COULD EVEN DANCE" WHILE AT THE SAME TIME HE CONTINUED TO PINCH MY BACKSIDE DESPITE MY PROTESTATIONS. I ALSO HEARD A SR. HUMAN RESOURCES EMPLOYEE REFER TO THE COMPANY AS A "WHITE MALE CLUB," IN ADDITION TO A NUMBER OF OTHER RUDE AND INSENSITIVE COMMENTS THAT INFERRED BIAS BECAUSE OF MY RACE, NATIONAL ORIGIN, RELIGION AND/OR COLOR. MR. POWELL NEVER ADDRESSED THESE ISSUES IN THE PROPER WAY, BUT INSTEAD BEGAN TO PARTICIPATE IN THE HARASSMENT, DISCRIMINATION AND RETALIATION BY CONTINUING TO ISOLATE AND EXCLUDE ME.

THE HARASSMENT, RETALIATION AND DISPARATE TREATMENT CONTINUED IN SEPTEMBER 2007, WHEN AN INDIVIDUAL WHO HAD BEEN REPORTING TO ME WAS TAKEN FROM ME AND TOLD TO REPORT TO ANOTHER PERSON. THIS OCCURRED WITHOUT ANY PRIOR DISCUSSION WITH ME OR NOTICE TO ME.

IN 2008, I CONTINUED TO HEAR COMMENTS MADE BY MR. POWELL THAT WAS DISPARAGING OF RACIAL MINORITIES AND WOMEN. I INFORMED THE COMPANY ABOUT HIS CONDUCT. IN ADDITION, I BECAME AWARE OF INFORMATION THAT WOULD SUGGEST THAT IMPROPER ACCOUNTING PRACTICES WERE OCCURRING WITHIN THE COMPANY. AGAIN, I NOTIFIED THE COMPANY ABOUT THESE CONCERNING DEVELOPMENTS. DESPITE MY MANY COMPLAINTS, THE COMPANY CONTINUED TO IGNORE MY COMPLAINTS.

IN FEBRUARY 2009, IN RESPONSE TO MY CONTINUED COMPLAINTS, MESSRS. LIPPS AND POWELL REMOVED ME FROM MY POSITION OF HEAD OF RESEARCH AND DEVELOPMENT AND DEMOTED ME AGAIN TO THE POSITION OF A "SENIOR ADVISOR." I CONTACTED MR. O'CONNELL IN HUMAN RESOURCES AND INFORMED HIM THAT I HAD BEEN PUSHED OUT OF MY POSITION IN RETALIATION FOR CONTINUING TO COMPLAIN ABOUT THE ISOLATION, HUMILIATION, HARASSMENT, DISCRIMINATION AND COMPANY IRREGULARITIES. DESPITE MY COMPLAINTS, I CONTINUED TO BE ISOLATED, EXCLUDED AND TREATED DIFFERENTLY BECAUSE OF MY COMPLAINTS. THIS UNFAIR TREATMENT CONTINUED UNTIL 2010 WHEN I WAS ULTIMATELY TERMINATED DESPITE SUPERIOR PERFORMANCE AND PRAISE FROM MANY WITHIN THE COMPANY.

*** EMPLOYMENT ***

COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACT

DFEH # E201112R5594-01

DFEH USE ONLY

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

YOUR NAME (Indicate Mr. or Ms.)

REIHANIFAM, MOHSEN

TELEPHONE NUMBER (INCLUDE AREA CODE)

(858)756-7174

ADDRESS

P.O. BOX 7183

CITY/STATE/ZIP

RANCHO SANTA FE, CA, 92067

COUNTY

SAN DIEGO

COUNTY CODE

073

NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, OR STATE OR LOCAL GOVERNMENT AGENCY WHO
DISCRIMINATED AGAINST ME:

NAME

LIPPS, BEN

TELEPHONE NUMBER (Include Area Code)

(781)699-9000

ADDRESS

920 WINTER STREET

DFEH USE ONLY

CITY/STATE/ZIP

WALTHAM, MA 02451

COUNTY

COUNTY CODE

NO. OF EMPLOYEES/MEMBERS (if known)

500+

DATE MOST RECENT OR CONTINUING DISCRIMINATION
TOOK PLACE (month, day, and year)

08/21/2010

RESPONDENT CODE

01

THE PARTICULARS ARE:

I allege that on about or before
08/21/2010, the following
conduct occurred:

<input checked="" type="checkbox"/> termination	<input type="checkbox"/> denial of employment	<input type="checkbox"/> denial of family or medical leave
<input type="checkbox"/> laid off	<input type="checkbox"/> denial of promotion	<input type="checkbox"/> denial of pregnancy leave
<input checked="" type="checkbox"/> demotion	<input type="checkbox"/> denial of transfer	<input type="checkbox"/> denial of equal pay
<input type="checkbox"/> harassment	<input type="checkbox"/> denial of accommodation	<input type="checkbox"/> denial of right to wear pants
<input type="checkbox"/> genetic characteristics testing	<input checked="" type="checkbox"/> failure to prevent discrimination or retaliation	<input type="checkbox"/> denial of pregnancy accommodation
<input type="checkbox"/> constructive discharge (forced to quit)	<input checked="" type="checkbox"/> retaliation	
<input type="checkbox"/> impermissible non-job-related inquiry	<input checked="" type="checkbox"/> other (specify) Harassment	

by LIPPS, BEN

CEO

because of:

Name of Person	Job Title (supervisor/manager/personnel director/etc.)
<input type="checkbox"/> sex	<input checked="" type="checkbox"/> national origin/ancestry
<input type="checkbox"/> age	<input type="checkbox"/> marital status
<input checked="" type="checkbox"/> religion	<input type="checkbox"/> sexual orientation
<input checked="" type="checkbox"/> race/color	<input type="checkbox"/> association
	<input type="checkbox"/> disability (physical or mental)
	<input checked="" type="checkbox"/> retaliation for engaging in protected activity or requesting a protected leave or accommodation
	<input type="checkbox"/> medical condition (cancer or genetic characteristic)
	<input type="checkbox"/> other (specify):

State of what you
believe to be the
reason(s) for
discrimination

I WAS TERMINATED FROM MY POSITION AT FRESenius (THE "COMPANY") IN RETALIATION FOR OPPOSING UNLAWFUL EMPLOYMENT PRACTICES, SPEAKING OUT AGAINST FINANCIAL IRREGULARITIES, STANDING UP FOR SAFETY AND QUALITY IN THE PRODUCTS AND OPPOSING UNLAWFUL, DISCRIMINATORY PRACTICES, INCLUDING, BUT NOT LIMITED TO SEXUAL HARASSMENT TOWARDS MYSELF AND OTHER MINORITIES, INCLUDING WOMEN. PRIOR TO THE RETALIATION, I WAS THE SUBJECT OF HARASSMENT AND DISCRIMINATION BASED ON MY RACE, NATIONAL ORIGIN, RELIGION AND/OR COLOR BEGINNING IN 1999 AND CONTINUING UP UNTIL I WAS TERMINATED IN AUGUST 2010.

I wish to pursue this matter in court. I hereby request that the Department of Fair Employment and Housing provide a right-to-sue. I understand that if I want a federal notice of right-to-sue, I must wait the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of the DFEH "Notice of Case Closure," or within 300 days of the alleged discriminatory act, whichever is earlier.

I have not been coerced into making this request, nor do I make it based on fear of retaliation if I do not do so. I understand it is the Department of Fair Employment and Housing's policy to not process or reopen a complaint once the complaint has been closed on the basis of "Complainant Elected Court Action."

By submitting this complaint I am declaring under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge except as to matters stated on my information and belief, and as to those matters I believe it to be true.

Dated 08/16/2011

At Walnut Creek

DATE FILED: 08/16/2011

DFEH-300-030 (02/08)

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

STATE OF CALIFORNIA

I WAS TERMINATED FROM MY POSITION AT FRESENIUS (THE "COMPANY") IN RETALIATION FOR OPPOSING UNLAWFUL EMPLOYMENT PRACTICES, SPEAKING OUT AGAINST FINANCIAL IRREGULARITIES, STANDING UP FOR SAFETY AND QUALITY IN THE PRODUCTS AND OPPOSING UNLAWFUL, DISCRIMINATORY PRACTICES, INCLUDING, BUT NOT LIMITED TO SEXUAL HARASSMENT TOWARDS MYSELF AND OTHER MINORITIES, INCLUDING WOMEN. PRIOR TO THE RETALIATION, I WAS THE SUBJECT OF HARASSMENT AND DISCRIMINATION BASED ON MY RACE, NATIONAL ORIGIN, RELIGION AND/OR COLOR BEGINNING IN 1999 AND CONTINUING UP UNTIL I WAS TERMINATED IN AUGUST 2010.

AFTER I BECAME PRESIDENT OF THE DIALYSIS WEST BUSINESS UNIT I SAW A DISTINCT RELAXATION OF MORAL STANDARDS. CORNERS BEGAN TO BE CUT, QUALITY OF PRODUCT WAS SACRIFICED, FINANCIAL IRREGULARITIES BEGAN TO SURFACE AND ABUSIVE BEHAVIOR TOWARDS MINORITIES WAS TOLERATED. WHEN I REFUSED TO LOOK THE OTHER WAY AND REPORTED THESE THINGS TO BOTH HUMAN RESOURCES (BRIAN O'CONNELL) AND THE CHIEF EXECUTIVE OFFICER OF THE COMPANY (BEN LIPPS), I BEGAN TO BE SUBJECTED TO UNFAIR SCRUTINY, DEMOTIONS, RETALIATION, HARASSMENT AND DISCRIMINATION. WHEN DISCUSSING ISSUES OF EMPLOYEE MORALE, MR. LIPPS COMMENTED THAT I HAD BEEN "IN THE SUN TOO LONG" REFERRING TO MY DARK SKIN COLOR AND THAT I WAS "AN ARGUING MIDDLE EASTERN NEGOTIATOR." WHEN I RAISED CONCERNS ABOUT IMPROPER BUSINESS, ETHICAL, FINANCIAL PRACTICES AND UNFAIR TREATMENT OF MINORITY EMPLOYEES, I WAS TRANSFERRED TO A MUCH SMALLER, NEWLY CREATED, POSITION (PRESIDENT OF DIALYSIS PRODUCTS RESEARCH AND DEVELOPMENT AND NEW BUSINESS DEVELOPMENT IN THE DIALYSIS PRODUCTS DIVISION) DESPITE THE FACT THAT THE DEPARTMENT I WAS IN CHARGE OF WAS CONSIDERED THE BEST WITHIN THE COMPANY AND HAD THE HIGHEST GROWTH RATE IN THE U.S., THE BEST CASH COLLECTION, THE BEST QUALITY AND THE LARGEST NUMBER OF CENTERS OF EXCELLENCE WITHIN THE COMPANY.

DESPITE SUFFERING WHAT I INTERPRETED AS A DEMOTION, I CONTINUED TO PERFORM AT A SUPERIOR LEVEL. DESPITE MY CHANGE IN POSITION I CONTINUED TO SEE THE SAME PROBLEMS AND I CONTINUED TO RAISE THE SAME CONCERNS TO COMPANY MANAGEMENT. WHEN I COMPLAINED TO MY DIRECT REPORT (MAURICE POWELL), THE RESULTS OF MY CONTINUED COMPLAINTS WAS THAT MESSRS. POWELL AND LIPPS BEGAN TO ISOLATE ME AND KEEP ME OUT OF THE LOOP BY EXCLUDING ME FROM MEETINGS AND OTHER KEY ACTIVITIES THAT I HAD PREVIOUSLY BEEN A ROUTINE PARTICIPANT AND DROPPING ME ALTOGETHER FROM RELEVANT DISTRIBUTION LISTS. I CONTINUED TO COMPLAINT TO MR. POWELL BOTH IN WRITING AND ORALLY ABOUT THE HARASSMENT, RETALIATION AND DISCRIMINATION I CONTINUED TO EXPERIENCE.

I REALIZED THAT THE COMPANY WAS NO LONGER A MINORITY FRIENDLY COMPANY AND WOULD NOT TREAT MINORITIES CORRECTLY, INCLUDING, BUT NOT LIMITED TO MYSELF. IN FACT, I HEARD THE COMPANY'S EMPLOYMENT LAWYER REFER TO THE COMPANY AS NOT BEING "A MINORITY FRIENDLY COMPANY" AND THAT THE COMPANY "DOES NOT TREAT MINORITIES CORRECTLY." PERSONALLY OFFENSIVE CONDUCT CONTINUED. ON ONE OCCASION DURING A CORPORATE EVENT WHERE DANCING WAS TAKING PLACE, BEING OF IRANIAN DESCENT, I FOUND IT OFFENSIVE FOR MR. POWELL TO COMMENT THAT HE DID NOT KNOW THAT "IRANIANS COULD EVEN DANCE" WHILE AT THE SAME TIME HE CONTINUED TO PINCH MY BACKSIDE DESPITE MY PROTESTATIONS. I ALSO HEARD A SR. HUMAN RESOURCES EMPLOYEE REFER TO THE COMPANY AS A "WHITE MALE CLUB," IN ADDITION TO A NUMBER OF OTHER RUDE AND INSENSITIVE COMMENTS THAT INFERRED BIAS BECAUSE OF MY RACE, NATIONAL ORIGIN, RELIGION AND/OR COLOR. MR. POWELL NEVER ADDRESSED THESE ISSUES IN THE PROPER WAY, BUT INSTEAD BEGAN TO PARTICIPATE IN THE HARASSMENT, DISCRIMINATION AND RETALIATION BY CONTINUING TO ISOLATE AND EXCLUDE ME.

THE HARASSMENT, RETALIATION AND DISPARATE TREATMENT CONTINUED IN SEPTEMBER 2007, WHEN AN INDIVIDUAL WHO HAD BEEN REPORTING TO ME WAS TAKEN FROM ME AND TOLD TO REPORT TO ANOTHER PERSON. THIS OCCURRED WITHOUT ANY PRIOR DISCUSSION WITH ME OR NOTICE TO ME.

IN 2008, I CONTINUED TO HEAR COMMENTS MADE BY MR. POWELL THAT WAS DISPARAGING OF RACIAL MINORITIES AND WOMEN. I INFORMED THE COMPANY ABOUT HIS CONDUCT. IN ADDITION, I BECAME AWARE OF INFORMATION THAT WOULD SUGGEST THAT IMPROPER ACCOUNTING PRACTICES WERE OCCURRING WITHIN THE COMPANY. AGAIN, I NOTIFIED THE COMPANY ABOUT THESE CONCERNING DEVELOPMENTS. DESPITE MY MANY COMPLAINTS, THE COMPANY CONTINUED TO IGNORE MY COMPLAINTS.

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*** EMPLOYMENT ***

COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACTDFEH # **E201112R5594-02**

DFEH USE ONLY

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

YOUR NAME (Indicate Mr. or Ms.)

REIHANIFAM, MOHSEN

TELEPHONE NUMBER (INCLUDE AREA CODE)

(858)756-7174

ADDRESS

P.O. BOX 7183

CITY/STATE/ZIP

RANCHO SANTA FE, CA, 92067

COUNTY

SAN DIEGO

COUNTY CODE

073NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, OR STATE OR LOCAL GOVERNMENT AGENCY WHO
DISCRIMINATED AGAINST ME:

NAME

POWELL, MAURICE

TELEPHONE NUMBER (Include Area Code)

(781)699-9000

ADDRESS

920 WINTER STREET

DFEH USE ONLY

CITY/STATE/ZIP

WALTHAM, MA 02451

COUNTY

COUNTY CODE

NO. OF EMPLOYEES/MEMBERS (if known)

500+DATE MOST RECENT OR CONTINUING DISCRIMINATION
TOOK PLACE (month, day, and year)**08/21/2010**

RESPONDENT CODE

02

THE PARTICULARS ARE:

I allege that on about or before
08/21/2010, the following
conduct occurred:☒ termination☐ denial of employment☐ denial of family or medical leave☐ laid off☐ denial of promotion☐ denial of pregnancy leave☒ demotion☐ denial of transfer☐ denial of equal pay☐ harassment☐ denial of accommodation☐ denial of right to wear pants☐ genetic characteristics testing☒ failure to prevent discrimination or retaliation☐ denial of pregnancy accommodation☐ constructive discharge (forced to quit)☒ retaliation☐ impermissible non-job-related inquiry☒ other (specify) Harassmentby **POWELL, MAURICE****CEO**

because of:

Name of Person

Job Title (supervisor/manager/personnel director/etc.)

☐ sex☒ national origin/ancestry☐ disability (physical or mental)☒ retaliation for engaging in protected☐ age☐ marital status☐ medical condition (cancer or

activity or requesting a protected

☒ religion☐ sexual orientation☐ genetic characteristic

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EXHIBIT C



Fresenius Medical Care

EMPLOYMENT AGREEMENT

THIS AGREEMENT is made, and entered into, as of April, 2003, by and between Fresenius Medical Care North America ("FMCNA" or the "EMPLOYER"), with principal offices located at 95 Hayden Avenue, Lexington, MA 02420 and Mohsen Reihanifam ("EMPLOYEE") currently residing at P.O. Box 605, Solana Beach, CA 92075.

WITNESSETH:

WHEREAS, FMCNA desires to employ EMPLOYEE as President of Dialysis Products Research and Business Development, Dialysis Products Division, and,

WHEREAS, the parties hereto desire to express the terms and conditions of such employment.

NOW THEREFORE, it is understood and agreed to between the parties as follows:

1. **Employment.** FMCNA hereby employs EMPLOYEE as President of Dialysis Products Research and Business Development, Dialysis Products Division, and EMPLOYEE hereby accepts the employment upon the terms and conditions of this Agreement.
2. **Term.** The term of this Agreement shall commence as of April, 2003 and continue thereafter, unless terminated in accordance with the provisions hereinafter stated. The Initial Term shall be renewed by a successive one (1) year period unless either party gives written notice of non-renewal to the other party at least thirty (30) days prior to any termination date. The Initial Term and any subsequent renewal periods shall be called the "Employment Term."
3. **Duties and Responsibilities.** EMPLOYEE shall serve full time as President of Dialysis Products Research and Business Development, Dialysis Products Division and in this position, EMPLOYEE shall report directly to the President of the Dialysis Products Division. EMPLOYEE shall to the best of his ability and experience competently, loyally, diligently and conscientiously perform all of the duties and obligations expressly or implicitly required under this Agreement. EMPLOYEE further agrees that, in conducting business in the interest of the EMPLOYER, he will not engage in, knowingly permit others under his control to carry on, or induce others to engage in any practice or commit any acts in violation of any federal or state or local law or ordinance.
4. **Compensation and Benefits.**
 - a) **Base Salary.** EMPLOYER shall pay EMPLOYEE for all services rendered a base salary of Two Hundred Sixty Three Thousand, Fifty-four Dollars and 79 Cents (\$263,054.79) per year, (the "Base Salary"), payable in accordance with FMCNA's payroll procedures, subject to customary withholding and employment taxes. At the end of each year of employment hereunder, EMPLOYEE's performance for the prior year shall be reviewed and evaluated. If EMPLOYEE's performance is satisfactory, EMPLOYEE shall receive an increase in his base salary commensurate with level of achievement.

- b) Incentive Compensation. During EMPLOYEE's employment with FMCNA, EMPLOYEE shall be entitled to participate in FMCNA's Management Bonus Plan and any other such incentive compensation plans as are now available or may become available to other similarly positioned senior executives of FMCNA. EMPLOYEE will be in the Management Bonus Plan at a target level bonus of forty percent (40%) and the maximum bonus is eighty percent (80%) of base salary. Funding for the plan is based upon attainment of specific individual and company financial objectives. EMPLOYEE's entitlement to a bonus under the Management Bonus Plan will be governed by terms of that Plan.
 - c) Stock Plan. EMPLOYEE shall be eligible to participate in the current Fresenius Medical Care AG Stock Incentive Plan, and any future stock incentive plan (individually a "Stock Plan" and collectively, the "Stock Plans"), subject to IRS approval of such respective Stock Plans. In addition to the existing options to purchase Fresenius Medical Care AG Preference Shares previously granted to EMPLOYEE (the "Existing Options"), EMPLOYEE shall be eligible to receive additional option grants in amounts as and if approved by the Fresenius Medical Care AG Managing Board.
 - d) Benefit Programs. EMPLOYEE shall continue to be eligible to participate in the group employee benefits programs at the senior executive level as now established or which subsequently become available.
 - e) Life Insurance. EMPLOYEE will be provided with life insurance in accordance with FMCNA's policy, currently capped at Four Hundred Thousand Dollars (\$400,000). EMPLOYEE will be provided with the opportunity to purchase supplemental life insurance of an additional Six Hundred Thousand Dollars (\$600,000) beyond the current policy of coverage at his own expense, with proof of good health.
 - f) Automobile. EMPLOYEE will be provided with a company car allowance of Seven Hundred Dollars (\$700) paid monthly and treated as ordinary income.
 - g) Financial Planning/Tax Preparation. EMPLOYEE will be provided with an allowance of One Thousand Dollars (\$1,000) to be paid based upon submitted documentation of expenses incurred as a result of financial planning assistance or income tax preparation. Reimbursement will be treated as ordinary income.
 - h) Expenses. EMPLOYEE will be reimbursed for travel and other expenses related to the performance of his duties under the Agreement and in accordance with the EMPLOYER's policies.
 - i) Vacation/PTO. EMPLOYEE shall be allowed to carry-over up to two hundred (200) hours from year-to-year without losing such time. EMPLOYEE shall also accrue PTO days at the maximum available to senior executives which currently provides for thirty five (35) days of PTO per year.
5. Termination of Employment. EMPLOYEE's employment hereunder may be terminated under the following circumstances:
- a) Death. EMPLOYEE's employment hereunder shall terminate upon his death.
 - b) Total Disability. The EMPLOYER may terminate EMPLOYEE's employment hereunder upon EMPLOYEE becoming "Totally Disabled." For purposes of this Agreement, EMPLOYEE shall be "Totally Disabled" if EMPLOYEE is physically or mentally incapacitated so as to render EMPLOYEE incapable of performing EMPLOYEE's usual and customary duties under this Agreement. EMPLOYEE's receipt of Social Security disability benefits or disability benefits under a Company-sponsored long-term disability plan shall be deemed conclusive evidence of Total Disability for purpose of this Agreement; provided, however, that in the absence of EMPLOYEE's receipt of such Social Security or long-term disability benefits, the Company's Board of Directors may, in its reasonable discretion (but based upon medical evidence), determine that EMPLOYEE is Totally Disabled.
 - c) Voluntary Termination. EMPLOYEE may terminate his employment hereunder at any time after providing written notice to the other party. The EMPLOYEE is required to give the EMPLOYER at least thirty (30) days written notice if he wishes to terminate his employment pursuant to this provision.

- d) Termination by the EMPLOYER for Cause. The EMPLOYER may terminate EMPLOYEE's employment for Cause at any time after providing thirty (30) days' written notice to EMPLOYEE. Such notice shall specify in reasonable detail the nature of the Cause, and during such thirty (30) day period, EMPLOYEE shall have the opportunity to cure the stated Cause, if at all possible. If EMPLOYEE fails to cure a stated Cause, or if such Cause cannot be cured, EMPLOYEE's employment hereunder shall terminate at the end of the thirty (30) day period, but without prejudice to EMPLOYEE's right to contest the existence of any stated Cause or to contest the fact that the Cause has not been cured. For purposes of this Agreement, the term "Cause" shall mean, with respect to the EMPLOYEE, any of the following: (i) conviction of EMPLOYEE of a felony; (ii) deliberate and continual refusal to satisfactorily perform employment duties reasonably requested by the EMPLOYER; (iii) fraud or embezzlement determined in accordance with the EMPLOYER's normal, internal investigative procedures consistently applied in comparable circumstances to EMPLOYEES; (iv) failure to obtain and maintain in good order any licenses required for EMPLOYEE to perform his duties under this Agreement; or (v) a breach of any of the covenants set forth in Section 7 below.
- e) Termination by EMPLOYEE for Cause. This Agreement may be terminated by EMPLOYEE in the event of a breach by FMCNA of any of its obligations under this Agreement, provided EMPLOYEE gives FMCNA written notice specifying the manner in which he believes FMCNA has breached this Agreement and FMCNA has thirty (30) days from receipt of such notice to cure such breach, or in the case of other than a non-payment of money breach, if such breach cannot be cured within thirty (30) days, to commence a good faith effort to cure.
- f) Notice of Termination. Any termination by the EMPLOYER or the EMPLOYEE under this Agreement shall be communicated by notice of termination to the other party hereto. For purposes of this Agreement, a Notice of Termination shall mean a notice in writing which shall indicate the specific termination provision in this Agreement relied upon to terminate EMPLOYEE's employment and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of EMPLOYEE's employment under the provision so indicated.

6. Compensation Following Termination of Employment.

- a) Under all circumstances, upon separation, the EMPLOYEE shall be entitled to receive:
- (i) Any accrued but unpaid Base Salary for services rendered to the date of termination;
 - (ii) Accrued PTO;
 - (iii) Any benefits to which EMPLOYEE may be entitled upon termination pursuant to the plans, policies and arrangements referred to in Section 4 hereof shall be determined and paid in accordance with the terms of such plans, policies and arrangements;
 - (iv) A payment equal to twenty four (24) months Base Salary, at the rate in effect on the date of termination of employment, such amount to be paid as salary continuation with benefits. EMPLOYEE may request and FMCNA will agree that any remaining salary continuation be paid in a lump sum. If a lump sum is selected, all benefits entitlement will cease as of the date of such payment; and
 - (v) A pro-rated portion of the EMPLOYEE's annual management bonus based upon termination of work date.
- b) At time of separation, EMPLOYEE may exercise one hundred percent (100%) of his vested stock options. If the terms of any award and governing plan are silent, with respect to termination of employment, such award will lapse immediately upon such termination. Ben Lipps, President and Chief Executive Officer, will use his

best effort to recommend to the Management Board of FMCAO that EMPLOYEE be granted up to two (2) years from the date of separation to exercise vested stock options.

7. **Non-Disclosure/Non Competition Agreement.** EMPLOYEE acknowledges that during the term of employment with EMPLOYER, he will have access to and become acquainted with Confidential Information of the EMPLOYER. Confidential Information means all information related to the present or planned business of FMCAO that has not been released publicly by authorized representatives of FMCAO, and shall include but not be limited to, trade secrets and know-how, inventions, marketing and sales programs, employee, customer, patient and supplier information, information from patient medical records, financial data, pricing information, regulatory approval and reimbursement strategies, data, operations and clinical manuals.

EMPLOYEE agrees not to use or disclose, directly or indirectly, any Confidential Information of FMCAO at any time and in any manner, except as required in the course of his employment with FMCAO or with the express written authority of FMCAO.

EMPLOYEE understands that his non-disclosure obligations will continue following his termination of employment.

EMPLOYEE agrees that during the term of his employment, and for a period of two (2) years immediately after, he leaves the employment of FMCAO for any reason or the end of the period during which EMPLOYEE continues to receive salary continuation after leaving the employment of FMCAO, whichever is greater, EMPLOYEE will not directly or indirectly for his own benefit or the benefit of others:

- a) render services for a competing organization in connection with competing products as an employee, officer, agent, broker, consultant, partner, stockholder (except that EMPLOYEE may own three percent (3%) or less of the equity securities of any publicly-traded company);
- b) hire or seek to persuade any employee of FMCAO to discontinue employment or to become employed in any competing organization or seek to persuade any independent contractor or supplier to discontinue its relationship with FMCAO; and
- c) solicit, direct, take away or attempt to take away any business or customers of FMCAO.

Nothing in this Agreement would preclude EMPLOYEE from working for a competitor of FMCAO subsequent to termination of EMPLOYEE's employment provided EMPLOYEE will not be engaged, directly or indirectly, in any business in which FMCAO is actively engaged at the time of EMPLOYEE's termination or in any new business which FMCAO is in the process of setting up in which EMPLOYEE had direct involvement while employed by FMCAO. EMPLOYEE also agrees to inform FMCAO of any such employment with a competitor before beginning such employment.

8. Enforcement of Covenants.

- a) EMPLOYEE agrees that if the EMPLOYER determines that EMPLOYEE has breached any of the covenants set forth in Section 7 at any time, the EMPLOYER shall have the right, notwithstanding anything herein to the contrary, to discontinue any or all amounts otherwise payable to EMPLOYEE hereunder. Such termination of employment or discontinuance of payments shall be in addition to and shall not limit any and all other rights and remedies that the EMPLOYER may have against EMPLOYEE.
- b) Right to Injunction. EMPLOYEE acknowledges that a breach of the covenants set forth in Section 7 hereof will cause irreparable damage to the EMPLOYER with respect to which the EMPLOYER's remedy at law for damages will be inadequate. Therefore, in the event of breach or anticipatory breach of the covenants set forth in this section by EMPLOYEE, EMPLOYEE and the EMPLOYER agree that the EMPLOYER shall be entitled to the following particular forms of relief, in addition to remedies otherwise available to it at law or equity: injunctions, both preliminary and permanent, enjoining or restraining such breach or anticipatory breach

and EMPLOYEE hereby consents to the issuance thereof forthwith and without bond by any court of competent jurisdiction.

- c) Separability of Covenants. The covenants contained in Section 7 hereof constitute a series of separate covenants, one for each applicable State in the United States and the District of Columbia, and one for each applicable foreign country. If in any judicial proceeding, a court shall hold that any of the covenants set forth in Section 7 exceed the time, geographic, or occupational limitations permitted by applicable laws, EMPLOYEE and the EMPLOYER agree that such provisions shall and are hereby reformed to the maximum time, geographic, or occupational limitations permitted by such laws. Further, in the event a court shall hold unenforceable any of the separate covenants deemed included herein, then such unenforceable covenant or covenants shall be deemed eliminated from the provisions of this Agreement for the purpose of such proceeding to the extent necessary to permit the remaining separate covenants to be enforced in such proceeding. EMPLOYEE and the EMPLOYER further agree that the covenants in Section 7 shall each be construed as a separate agreement independent of any other provisions of this Agreement, and the existence of any claim or cause of action by Employee against the Company whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Company of any of the covenants in Section 7.
9. PMCNA Documents and Equipment. All documents and equipment relating to the business of PMCNA, whether prepared by EMPLOYEE or otherwise coming into EMPLOYEE's possession, are the exclusive property of PMCNA, and must not be removed from the premises of PMCNA except as required in the course of employment. Any such documents and equipment must be returned to PMCNA when EMPLOYEE leaves the employment of PMCNA.
10. Withholding of Taxes. The EMPLOYER may withhold from any compensation and benefits payable under this Agreement all applicable federal, state, local, or other taxes.
11. Entire Agreement and Amendments. This Agreement shall constitute the entire agreement between the parties and supersedes all existing agreements between them, whether oral or written, with respect to the subject matter hereof. Any waiver, alteration, or modification of any of the provisions of this Agreement, or cancellation or replacement of this Agreement shall be accomplished in writing and signed by the respective parties.
12. Notices. Any notice, consent, request or other communication made or given in connection with this Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by registered or certified mail, return receipt requested, to those listed below at their following respective addresses or at such other address as each may specify by notice to the others:

To the Employer:

Fresenius Medical Care North America
Corporate Headquarters
Two Ledgemont Center
95 Hayden Avenue
Lexington, MA 02420-9192
Attention: Vice President, Human Resources

To Employee:

At the address for Employee set forth above

13. Governing Law. This Agreement shall be construed in accordance with, and the rights of the parties shall be governed by, the laws of the Commonwealth of Massachusetts.

14. Separability. If any term or provision of this Agreement is declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, such term or provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by the undersigned duly authorized persons as of the day and year first stated above.

WITNESS

Denise Carpenter

NATIONAL MEDICAL, INC. d/b/a
FRESENIUS MEDICAL CARE
NORTH AMERICA, EMPLOYER

By: Rice Powell
R. Maurice (Rice) Powell
President
Dialysis Products Division

4/25/03
(DATE)

WITNESS

Lorain Littlejohn

MOHSEN REIHANIFAM

M. Reihanifam
(Employee Signature)

5/14/03
(DATE)

MR

EXHIBIT D



Fresenius Medical Care

Internal Memo

TO: FMCNA Executives

FROM: Brian O'Connell

DATE: December 18, 2008

SUBJECT: REVISED AMENDMENT

Fresenius Medical Care
North America
Corporate Headquarters
Human Resources and Administration
920 Winter Street
Waltham, MA 02451-1457
Phone: (781) 699-9205
Fax: (781) 699-9734

Enclosed is a revised amendment to your employment agreement. The purpose of this amendment is to prevent you from experiencing early federal income taxation and excise taxes. You must sign this amendment and return to me by December 22. We cannot back date the amendment.

Your employment agreement contains provisions that call for, under certain circumstances, payments to be made to you after your termination of employment. These provisions create the possibility that you may, in the future, receive payments that would be considered to be "deferred compensation" under Section 409A of the Internal Revenue Code. Payment of deferred compensation, in a manner that fails to comply with IRS regulations under Section 409A, will give rise to early income taxation and additional excise taxes. To avoid these adverse tax consequences, your employment agreement must be revised during 2008.

Your agreement provides that you will be paid 24 months' Base Salary in the event that Fresenius terminates your employment without cause (i.e., fires you without cause). The agreement generally provides that you may elect to receive your Severance Pay in either a lump sum or in regular paychecks. By electing the latter payment method, you could continue to receive certain employee benefits. This time-of-payment election causes a problem under Code Section 409A, which generally requires that an agreement establish an exact time that payments will be made. However, the IRS regulations provide that amounts up to the "Separation Pay Limit" are exempt from Code Section 409A.

Under IRS regulations, the Separation Pay Limit is two times the Lesser of (A) or (B), where "(A)" is your base salary plus bonus earned during the calendar year preceding your termination, "(B)" is the adjusted compensation limit in effect for the year of the termination. The limit in place for 2009 will be \$245,000. Because your Base Salary exceeds \$245,000, we can compute your applicable "Separation Pay Limit" using only part "(B)" of the formula. Thus during 2009, your applicable Separation Pay Limit would be \$490,000.

Based on the foregoing, the amendment to your employment agreement reflects the following with respect to time-of-payment elections of your Severance Pay: If you make no election, your Severance Pay will be paid over 24 months in regular bi-weekly paychecks; you will remain eligible for benefits, and your checks will be reduced by the applicable benefit deductions. However you may elect to receive up to \$490,000 (for 2009) of your Severance Pay in a lump sum. If you elect to receive a lump sum, the remainder of your Severance Pay will be paid on bi-weekly paychecks. Those paychecks will begin as soon as practicable following the six-month anniversary of your employment termination date, and will be paid over an 18-month period. If you elect to receive a lump sum, your eligibility for benefits will terminate.

THIS AMENDMENT ("Amendment") amends the Employment Agreement dated as of April, 2003 (the "Agreement"), by and between Fresenius Medical Care North America ("FMCNA" or the "EMPLOYER") and Mohsen Reihanifam ("EMPLOYEE"). This Amendment is effective as of January 1, 2009.

I. Section 5(c) of the Agreement is hereby restated to read as follows:

c) Voluntary Termination. EMPLOYER or EMPLOYEE may terminate EMPLOYEE's employment hereunder at any time after providing written notice to the other party. The EMPLOYEE is required to give the EMPLOYER at least thirty (30) days' written notice if he wishes to terminate his employment pursuant to this provision.

II. Section 6 of the Agreement is hereby restated in its entirety to read as follows:

6. Compensation Following Termination of Employment.

(a) Under all circumstances, upon termination the EMPLOYEE shall be entitled to receive:

- (i) Any accrued but unpaid Base Salary for services rendered to the date of termination;
- (ii) Accrued PTO; and
- (iii) Any benefits to which EMPLOYEE may be entitled upon termination pursuant to the plans, policies and arrangements referred to in Section 4 hereof shall be determined and paid in accordance with the terms of such plans, policies and arrangements.

(b) In addition to amounts payable under paragraph (a), in the event that EMPLOYEE's employment hereunder is terminated, the EMPLOYEE shall also be entitled to receive payments as described in subparagraphs (i) and (ii) below:

- (i) A payment equal to twenty-four (24) months' Base Salary, at the rate in effect on the date of termination of employment (the "Severance Pay"). The Severance Pay shall be paid as salary continuation with benefits, but EMPLOYEE may elect, under FMCNA's election procedures, to receive a portion of the Severance Pay in the form of a lump sum; provided however that such lump sum may not exceed the 409A Separation Pay Limit (as defined below). If such a lump sum is elected, it will be paid as soon as practicable following EMPLOYEE's date of termination, but in any event no later than 90 days following such date of termination. If EMPLOYEE elects to receive a lump sum, all benefits entitlement will cease as of EMPLOYEE's date of termination. If EMPLOYEE elects a lump sum, any amount by which the Severance Pay exceeds the amount of the lump sum will be paid to EMPLOYEE by FMCNA on bi-weekly paychecks, in accordance with FMCNA's regular payroll practices, over an eighteen (18) month period beginning as soon as practicable after (but in any case within 90 days after) the six-month anniversary of

EMPLOYEE's date of termination. (Thus for example, if EMPLOYEE's total Severance Pay is \$656,602, and the 409A Separation Pay Limit is \$490,000, and EMPLOYEE elects to receive a lump sum payment of \$490,000, then the remaining \$166,602 of Severance Pay will be paid to EMPLOYEE on bi-weekly paychecks of approximately equal amount over the eighteen (18) month period beginning as soon as practicable after the six-month anniversary of EMPLOYEE's termination date.)

- (ii) A pro-rated portion of the EMPLOYEE's annual bonus based upon termination of work date. Payment of such bonus shall be made in a single lump sum payment within the 90-day period following the date that payment is made to still-active employees participating in such bonus arrangement (such payment date is the "Regular Incentive Compensation Payment Date"); provided however, that if EMPLOYEE is a Specified Employee (as defined below), such payment shall be made within 90 days following the later of (x) the Regular Incentive Compensation Payment Date, and (y) the date that is six months after EMPLOYEE's date of termination.
- (iii) For purposes of this Section 6, the following definitions shall apply:
 - (A) "409A Separation Pay Limit" means two times the lesser of (x) EMPLOYEE's base salary plus bonus earned from services provided to EMPLOYER during the calendar year preceeding the year of the termination of employment; and (y) the adjusted compensation limit under Code section 401(a)(17) in effect for the year of the termination.
 - (B) "Specified Employee" means an employee who is a specified employee under Treas. Reg. § 1.409A-1(i), as determined under the FMCNA Deferred Compensation Plan.
- (c) At time of separation, EMPLOYEE may exercise on hundred percent (100%) of his vested stock options. If the terms of any award and governing plan are silent, with respect to termination of employment, such award will lapse immediately upon such termination. Ben Lipps, President and Chief Executive Officer, will use his best effort to recommend to the Management Board of Fresenius Medical Care AG & Co., KGaA that EMPLOYEE be granted up to two (2) years from the date of separation to exercise vested stock options.

[signatures follow]

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by the undersigned duly authorized persons as of the date(s) set forth below.

**NATIONAL MEDICAL CARE, INC. d/b/a
FRESENIUS MEDICAL CARE
NORTH AMERICA, EMPLOYER**

WITNESS

By: _____
(Officer Signature) (DATE)

Name: _____

Title: _____

MOHSEN REIHANIFAM

WITNESS

(Employee Signature) (DATE)

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PROOF OF SERVICE

I, the undersigned, hereby declare that I am over the age of 18 years and not a party to the above-captioned action; that my business address is 2977 Ygnacio Valley Road, #267, Walnut Creek, CA 94598.

On February 14, 2013, the following document(s) was served:

- **FIRST AMENDED COMPLAINT; AND**
- **THIS PROOF OF SERVICE**

on the parties to this action at the following address(es):

Lisa J. Damiani, Esq.
DAMIANI LAW GROUP APC
701 B Street, Suite 1110
San Diego, CA 92101

Juanita Brooks, Esq.
FISH & RICHARDSON PC
12390 El Camino Real
San Diego, CA 92130

Attorneys for Fresenius Medical Care
North America, Ben Lipps and R.
Maurice Powell

() (BY MAIL) I caused a true copy of each document(s) to be placed in a sealed envelope with first-class postage affixed and placed the envelope for collection. Mail is collected daily at my office and placed in a United States Postal Service collection box for pickup and delivery that same day.

☒ (BY MESSENGER) I caused a true copy of each of the document(s) listed above to be submitted to an authorized courier and/or process server for hand deliver on the date noted herein.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 14, 2013, at Walnut Creek, California.


H. Larry Elam

PROOF OF SERVICE

LAW OFFICE OF H. LARRY ELAM III
2977 Ygnacio Valley Road, #267
Walnut Creek, CA 94598
Tel: (925) 465-5151
Fax: (925) 465-5152